

SENATE BILL 23
By Finney

AN ACT to amend Tennessee Code Annotated, Title 50,
relative to employee's right to inspect certain
records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following SECTIONS 2 through 10 as a new part thereto.

SECTION 2. It is the intent of the general assembly to allow an employee the right to inspect and obtain copies of certain items in such employee's personnel record maintained by such employee's employer. It is further the intent of the general assembly to establish minimum standards for the inspection of personnel records by an employee.

SECTION 3. As used in this act:

(1) "Employee" means any person who is paid wages or salary for work performed for or on behalf of an employer;

(2) "Employer" means any person, corporation or other entity which employs more than one (1) person at a workplace located within Tennessee;

(3) "Personnel record or file" means a collection of documents, reports, communications and other similar records used to evaluate an employee for raises, promotions or suitability for continued employment.

SECTION 4. An employee shall have the right to inspect or copy any of the following items in such employee's personnel record if such items are maintained in the record:

(1) Evaluations of the employee's performance or competency;

(2) Disciplinary actions, including reasons for granting or denying the employee's promotions or pay raises;

- (3) Scores for the employee's performance evaluation tests;
- (4) The employee's credit rating;
- (5) Accident reports involving the employee;
- (6) Any report of exposure of the employee to chemical, biological, carcinogenic, radiological or other hazards potentially affecting the health of the employee, whether the health risk is immediate or delayed;
- (7) Medical and psychological reports and ancillary test reports including, but not limited to, laboratory tests, drug tests and radiological procedures; and
- (8) Results of any polygraph or lie detector test administered upon the employee.

SECTION 5. An employee shall not have the right to inspect or copy any of the following items in such employee's personnel record:

- (1) Any investigation of employee wrongdoing, which may result in dismissal for cause, civil prosecution or criminal prosecution; and
- (2) Any correspondence between the employer and the employer's attorney, even if such correspondence involves the employee.

SECTION 6.

(a) An employee may initiate a request to examine such employee's personnel record by submitting to a supervisor, manager, owner or person responsible for maintaining personnel records the following statement, which may be typewritten or legibly handwritten: "I, [*employee's name*], of [*employee's address*], request that I be permitted to view my personnel record."; followed by the employee's signature and date such request was made.

(b) Following a request submitted under subsection (a), an employer shall arrange a date and time that the employee may examine the personnel record. The

date of such examination shall occur within three (3) working days of the employee's request. The time of the examination shall be at the employer's discretion during regular business hours or within one (1) hour before or after regular business hours. The place of the examination shall be at the physical address at which the employee works, unless the employee does not work at a location, then the place of examination shall be at the physical address where the records are kept. The employer may choose not to pay the employee wages during the time in which the personnel record is being examined. The employee may not remove the personnel record from the employer's place of business. The employee may not remove or destroy anything from the personnel record. The employee may not write any notations or make any deletions on any document in the file.

(c) The employee may examine such employee's personnel file only in the presence of the employer or a representative of the employer.

(d) The employee may not examine such employee's personnel file more than three (3) times in any calendar year. The employee may not take more than one (1) hour to examine such employee's personnel file during each request.

(e) The employee may request photocopies of all or part of that portion of such employee's personnel record to which such employee is entitled to examine. If the employer has access to a photocopier at the place of business, the employer may assess the employee a photocopying charge of ten cents (10¢) per page. If the employer does not have access to a photocopier at the place of business, the employer may assess the employee the actual costs of preparing the photocopies at a copy or print shop and twenty-five dollars (\$25.00) for the costs incurred by travel to a copy or print shop. If the employer has access to a photocopier at the place of business, the employer shall have the copies available within one (1) working day of the employee's

request for record copying. If the employer does not have access to a photocopier at the place of business, the employer shall have the copies available within three (3) working days of the employee's request for record copying.

SECTION 7. If an employee believes or has reason to believe any portion of such employee's record is erroneous, such employee may write a statement contesting the information considered erroneous. The employer shall maintain the employee's statement of rebuttal or correction as part of the employee's personnel record.

SECTION 8. If an employer fails to comply with the request of the employee to view or copy such employee's personnel record, the employee may request the department of labor and workforce development to investigate and secure compliance with the request.

SECTION 9. An employer who refuses to comply with an employee's request for inspection of such employee's personnel record commits a Class A misdemeanor.

SECTION 10. Nothing in this act shall be construed as requiring an employer to maintain personnel records. Nothing in this act shall be construed as limiting broader agreements or rules between an employer and a recognized employee organization regarding inspection of personnel records.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.